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IN THE
COURT OF APPEALS OF INDIANA

RICHARD CANTERBURY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 29A02-0708-CR-753

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0403-FC-42

April 1, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Richard Canterbury pled guilty to Forgery,¹ a class C felony, and was sentenced to three years in prison. Canterbury challenges his conviction on the bases of ineffective assistance of counsel and Trial Rule 4(C). We do not reach those issues, however, because we conclude the following issue is dispositive of the appeal: May a defendant challenge via direct appeal a conviction entered upon a guilty plea?

We dismiss.

On October 14, 2003, Canterbury presented a check purporting to authorize payment from the account of Terry Sweeny, doing business as Sweeny and Company, LLC. Sweeny had not given Canterbury permission to withdraw money from that account. As a result of that and other incidents, Canterbury was charged with two counts of forgery as class C felonies, fraud on a financial institution as a class C felony, and two counts of identity deception as class D felonies. The State and Canterbury entered into a plea agreement whereby Canterbury agreed to plead guilty to one of the forgery counts in exchange for the State's agreement to dismiss the remaining charges. The parties also agreed on a three-year sentence. The trial court accepted the agreement and entered judgment thereon, resulting in a conviction of class C felony forgery and a three-year sentence.

¹ Ind. Code Ann. § 35-43-5-2(4) (West, PREMISE through 2007 1st Regular Sess.).

Canterbury challenges his conviction on two bases, both relating to T.R. 4(C).² He contends he is entitled to dismissal because the State did not bring him to trial within the timeframe set out in that rule. His claim of ineffective assistance of counsel is closely linked with the T.R. 4(C) claim. Canterbury is before us on a direct appeal, not from the denial of a petition for post-conviction relief. The State contends his claims may not be raised on direct appeal. The State is correct.

With limited exceptions not applicable here,³ “a conviction based upon a guilty plea may not be challenged by ... direct appeal.” *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996). Post-conviction relief is the correct avenue for presenting claims pertaining to convictions resulting from guilty pleas. *Brightman v. State*, 758 N.E.2d 41. The issue

² That subsection states:

No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

³ The exceptions are: (1) a person who pleads guilty is entitled to contest on direct appeal the merits of a trial court’s sentencing decision where the trial court exercised sentencing discretion. *See Collins v. State*, 817 N.E.2d 230 (Ind. 2004); and (2) a person who pleads guilty is entitled to contest on direct appeal the trial court’s discretion in denying withdrawal of the guilty plea prior to sentencing. *Brightman v. State*, 758 N.E.2d 41 (Ind. 2001).

of whether Canterbury's conviction should be dismissed on either of the grounds he raises herein should be pursued by filing a petition for post-conviction relief. *See Creekmore v. State*, 853 N.E.2d 523 (Ind. Ct. App. 2006), *clarified on reh'g*, 858 N.E.2d 230. Accordingly, Canterbury's appeal with respect to these issues is dismissed.⁴ *See id.*

Appeal dismissed.

ROBB, J., and MATHIAS, J., concur.

⁴ In his reply brief, Canterbury acknowledges that entering into a guilty plea normally waives the right to speedy trial. He raises the novel contention, however, that the interplay of *Gosnell v. State*, 439 N.E.2d 1153 (Ind. 1982) and the Interstate Agreement on Detainers Act divested the trial court of jurisdiction in his case. We decline to address this new argument because the purpose of a reply brief is to respond to appellee's arguments, not to raise new issues. *See* Ind. Appellate Rule 46(C) ("[n]o new issues shall be raised in the reply brief"). As our Supreme Court has explained,

The law is well settled that grounds for error may only be framed in an appellant's initial brief and if addressed for the first time in the reply brief, they are waived. *See French v. State*, 778 N.E.2d 816, 826 (Ind. 2002) (holding that the appellant waived an issue by not raising it in his principal brief); *Crossmann Communities, Inc. v. Dean*, 767 N.E.2d 1035, 1044 (Ind. Ct. App. 2002) (issues raised for the first time in a reply brief are deemed waived)[.]

Monroe Guar. Ins. Co. v. Magwerks Corp., 829 N.E.2d 968, 977-78 (Ind. 2005).